

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL  
WORKERS, LOCAL UNION 357, AFL-CIO**

**and**

**Case 28-CC-115255**

**DESERT SUN ENTERPRISES LIMITED d/b/a  
CONVENTION TECHNICAL SERVICES**

**COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO  
CHARGING PARTY'S MOTION TO SUPPLEMENT THE RECORD**

Charging Party's motion to supplement the record should be rejected because it fails to satisfy the standards for such motions in Section 102.48(d)(1) of the Board's Rules and Regulations. But even if the Rules were otherwise, Charging Party's attempt to include evidence of conduct that occurred nearly two years after the complaint allegations are wholly irrelevant to the issues to be decided.

**BACKGROUND**

This case is before the Board on Counsel for the General Counsel's Limited Exceptions to the Administrative Law Judge's decision that issued on July 28, 2014. In his decision, the Administrative Law Judge (the ALJ) considered actions by International Brotherhood of Electrical Workers, Local Union 357, AFL-CIO (Respondent) on October 9, 2013, based on a Stipulation of Facts entered into by Counsel for the General Counsel (CGC) and Counsel for the Respondent. As found by the ALJ, the purpose of the Stipulation of Facts that admitted "each of the essential allegations of the complaint" (ALJD p. 3: lines 32-33) was to reverse Board precedent that a union violates the Act as a result of its failure to provide *Moore Dry Dock* assurances to a secondary employer (ALJD p. 4: lines 1-29).

## **ARGUMENT**

The action of Respondent giving rise to the complaint and finding of violation by the ALJ were based on Respondent's strike sanction request letter dated October 9, 2013, and the Trades Council's approval of this request did not inform anyone that, if it established a picket line, it would comply with the standards contained in *Sailors Union of the Pacific (Moore Dry Dock)*, 92 NLRB 547 (1950). This was a distinct act about which Respondent filed a charge and the Region issued a complaint. The case tried on May 6, 2014, and the ALJ issued his decision on July 28, 2014.

The Charging Party now seeks to supplement the record with affidavits it attaches to its Motion. Section 102.48(d)(1) of the Board's Rules and Regulations expressly limits the circumstances under which such a motion to supplement the record may be granted:

A motion to reopen the record shall state briefly the additional evidence sought to be adduced, why it was not presented previously, and that, if adduced and credited, it would require a different result. Only newly discovered evidence, evidence which has become available only since the close of the hearing, or evidence which the Board believes should have been taken at the hearing will be taken at any further hearing.

There is no provision for the Charging Party to provide to the Board the evidence it seeks to add to the record.

Further, the attached affidavits point to actions occurring in May 2015. Any actions by Respondent, assuming that they occurred, have no bearing on Respondent's actions in October 2013. Indeed, the Charging Party appears to concede as much when it describes Respondent's actions as an "extraordinary change of position." The Charging Party fails to articulate how a change in position one and one-half years after Respondent's actions in October 2013 is relevant or should be considered by the Board. The Charging Party should

not be permitted to continue to supplement the record with this or any other recent alleged actions by Respondent while the case is pending decision by the Board.

Dated at Las Vegas, Nevada this 22<sup>nd</sup> day of May 2015.

Respectfully submitted,

/s/ **Nathan A. Higley**

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of **COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO CHARGING PARTY'S MOTION TO SUPPLEMENT THE RECORD** in INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 357, AFL-CIO, Case 28-CC-115255, was served by E-Gov, E-Filing, E-Mail and regular U.S. Mail, on this 22<sup>nd</sup> day of May 2015, on the following:

**Via E-Gov, E-Filing:**

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*/s/ Dawn M. Moore*

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